This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS SECTION 01 OF 02 MANILA 005966

SIPDIS

SENSITIVE

STATE FOR EAP, EAP/MTS, EAP/MLS, AND L/EAP
USPACOM FOR WILLIAM ALDERSON
USPACOM ALSO FOR FPA HUSO
SECDEF/OSD/ISA/AP FOR ALLEN

E.O. 12958: N/A
TAGS: PREL MARR ASEC PHUM PGOV KCRM CASC RP
SUBJECT: PROSECUTOR FILES CHARGES AGAINST FOUR MARINES IN
SUBIC RAPE CASE

REF: A. MANILA 5755

        ¶B. MANILA 5507
        ¶C. MANILA 5459
        ¶D. STATE 212917
        ¶E. MANILA 5371
        ¶F. MANILA 5348
        ¶G. MANILA 5317
        ¶H. MANILA 5300
        ¶I. MANILA 5231
        ¶J. MANILA 5138
        ¶K. COMPACTFLT PEARL HARBOR HI 030112Z NOV 05
        ¶L. OPREP-3/CTF 76.4/022000Z NOV 05 (NOTAL)

¶1. (SBU) Summary. The Olongapo City Prosecutor filed
charges on December 27 against four of the six Marines under
investigation for the alleged rape of a Filipina. In
comments to the media, the prosecutor said he intended to
seek custody of the four Marines once the court had issued
arrest warrants. The attorney for the complainant has stated
she intends to ask for a review of the decision not to charge
the two other Marines but has not done so as of COB December
¶27. We are awaiting the legal opinion of the counsel of the
two Marines before moving to return them to their home duty
station, perhaps as early as December 28. The prosecutor has
indicated that he will seek custody of the four charged
Marines upon issuance of arrest warrants. We will continue
to remind senior officials -- and the public, as necessary --
that the VFA provides for U.S. custody until the completion
of judicial proceedings. End Summary.

¶2. (U) Olongapo City Prosecutor Prudencio Jalandoni filed
charges for rape and conspiracy to commit rape on December 27
in the Olongapo Regional Trial Court against four of the six
Marines -- Staff Sergeant Chad Carpentier and Lance Corporals
Keith Silkwood, Dominic Duplantis, and Daniel Smith -- under
investigation for their involvement in the alleged November
1, 2005 rape of a 22-year old Filipina on the grounds of the
Subic Bay Metropolitan Authority (SBMA). Jalandoni also
filed co-conspiracy charges against Timoteo Soriano, the
driver of the van in which the Marines were riding when the
purported incident occurred.

¶3. (SBU) Speaking to the news media following the filing of
charges, Jalandoni said he expected the court to issue arrest
warrants shortly for Soriano and the accused Marines, and
indicated that he intends to seek custody. The Department of
Foreign Affairs had earlier requested custody of the Marines
(refs D-F). The Visiting Forces Agreement (VFA) explicitly
states that US military authorities (in this case, JUSMAG)
retain custody of any US personnel until the completion of
judicial proceedings. The United States is only obligated to
"take into full account" any GRP request for custody.
(Comment: We will advise Department if/when we believe that
a formal response to the Philippine request for custody would
be useful. End comment)

¶4. (SBU) Corporal Corey Burris and Lance Corporal Albert
Lara were not charged in the case. Jalandoni stated that due
to insufficient evidence, he was dismissing the complaint
against the two Marines, stating: "US Military Authorities
holding them in custody pursuant to the Visiting Forces
Agreement are hereby authorized to release them unless held
for some other cause or causes."

¶5. (SBU) During a television interview, the complainant's
attorney, Katrina Legarda, said she planned to file a motion
for a partial review or reconsideration of the decision not
to charge Burris and Lara. Attorney Carlito Zaragoza, whose
firm is representing both Marines, said he and his fellow
attorneys were still studying the implications of Legarda's
plan.

¶6. (SBU) Jalandoni told Naval Criminal Investigative Service
(NCIS) Resident Agent in Charge December 23 that he intends
to make separate proffers to Silkwood and Duplantis on
January 9, offering immunity from prosecution to any one who
turns state's witness. Jalandoni indicated, with some

frustration, that Legarda has still refused to grant him access to her client.

¶7. (SBU) Comment; The Embassy retains custody of all six Marines. If the victim's lawyer does not file a motion expeditiously -- i.e. by December 28 -- we are prepared to proceed with arrangements to move the two Marines who were not charged out of the Philippines on a military flight as early as December 28. We will retain custody of the four charged Marines. We continue to believe that a formal reply to the Philippine request for custody would be counterproductive, but will advise Department if our view changes. End comment

¶8. (U) Embassy has provided the following press statement to the media in response to numerous inquiries.

BEGIN TEXT.

December 27, 2005

Formal Charges Filed in Alleged Rape Incident Involving U.S. Marines

The Office of the City Prosecutor of Olongapo City formally filed charges on December 27, 2005 against Staff Sergeant Chad Carpentier, Lance Corporal Dominic Duplantis, Lance Corporal Keith Silkwood, and Lance Corporal Daniel Smith for the crime of rape. The charged U.S. Marines remain in U.S. custody in the Philippines.

The complaints against the other U.S. military personnel involved in this alleged incident were dismissed.

The U.S. worked with Philippine authorities under the precepts of the Visiting Forces Agreement (VFA) throughout the investigation of the alleged incident. The U.S. will continue to cooperate with Philippine authorities in accordance with the VFA as the case moves to trial under Philippine jurisdiction.

It is a principle of Philippine and American law that anyone accused of a crime is presumed innocent until proven guilty. The U.S. remains committed to seeing that justice is served, and looks forward to a fair and impartial process that can provide for a just outcome.

END TEXT.

Visit Embassy Manila's Classified website: http://www.state.sgov.gov/p/eap/manila/index. cfm
Jones